

## DEPARTMENT OF STATE REVENUE

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**ISSUE: Public Transportation Exemption**

**Authority:** [IC 6-2.5-5-27](#); [45 IAC 2.2-5-61](#) to 63; Sales Tax IB #12, Dec. 2002; *Calcar Quarries, Inc.*, Ind. Tax Ct. (1979); *National Serv-All*, Ind. Tax Ct. (1994); *Indiana Waste*, Ind. Tax Ct. (1994); *Panhandle Eastern*, Ind. Tax Ct. (2001); *Carnahan Grain*, Ind. Tax Ct. (2005)

**[IC 6-2.5-5-27](#) Transactions involving tangible personal property - Use in providing public transportation.**

[P]roperty and services are exempt from state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property. [1980]

**[45 IAC 2.2-5-61](#) Public transportation; acquisitions.**

(b) [P]ublic transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration . . . [1987]

**I. GENERAL STATEMENT**

The purchase or rental of tangible personal property is exempt from sales tax provided the purchaser predominantly [FN 1] uses the property in transporting persons or property for consideration, i.e., public transportation.

**II. RELEVANT COURT DECISIONS**

A. *Indiana Waste System*: In *Indiana Waste System* [FN 2] the court stated: "If the carrier is not predominately engaged in transporting property of another, it is not entitled to the exemption."

B. *Panhandle Eastern*: The Tax Court held in *Panhandle Eastern* that the public transportation exemption provided by [IC 6-2.5-5-27](#) is an all-or-nothing exemption. If a taxpayer acquires tangible personal property for **predominate use** in providing public transportation for third parties, it is entitled to the exemption. If a taxpayer is not **predominately engaged** in transporting the property of another, it is not entitled to the exemption. [FN 3]

C. *Carnahan Grain*: In *Carnahan Grain*, the Tax Court addressed the Department's interpretation of *Panhandle Eastern* and clarified its position regarding property purchased for use in public transportation. The Court stated:

" . . . when read in context with the rest of the *Panhandle* opinion, the language cited by the Department simply does not create a two-prong test. . . . the two sentences represent two sides of the same coin, both focusing on the use of the property. If . . . the property is used predominately for third-party public transportation, then the taxpayer is entitled to the exemption. Conversely, if the property is *not* predominately used for third-party public transportation (i.e., it is predominately used to transport the taxpayer's own property), then the taxpayer is not entitled to the exemption."

This is merely a restatement of the opinion expressed by the Indiana Court of Appeals in *Calcar Quarries*. [FN 4] The Appeals Court focused solely on the use of the property stating that "when an item has been used for several purposes and only some of the purposes qualify the item for exemption, the taxpayer can gain exemption for the total amount of the purchase price of the item by showing that the item was used predominately in an exempt manner."

**III. DETERMINATION OF EXEMPTION**

If the taxpayer purchases tangible personal property and the property is predominately used to provide public transportation, it is exempt from taxation under [IC 6-2.5-5-27](#). Eligibility for the exemption hinges on whether or not the property is used in public transportation for third parties.

**IV. EXAMPLES**

A. Company XYZ purchased three trucks to be used exclusively in transporting merchandise for third parties. This purchase would be exempt from tax.

B. Company XYZ purchased three trucks to be used in transporting their own product. For three weeks during the year the taxpayer's manufacturing facility is shut down for maintenance. During this time, the company's transportation division transports property for third parties. Since the time spent in transporting goods for another party is less than 50 percent of the total time goods are being transported, no exemption is available.

C. Company XYZ purchased five new trucks. The trucks are used to transport their own goods across the country. Rather than return to their facility empty (deadheading), they contract to pick up another company's product to deliver to a facility along their route (backhaul [FN 5]). The company travels a total of 1580 miles. Of this amount 980 miles are traveled in transporting their goods and 600 miles in backhauling. They backhaul less than 50 percent of the total miles traveled; therefore, no exemption is applicable.

[FN 1] As defined in [45 IAC 2.2-4-13](#)(e); [45 IAC 2.2-5-24](#)(a)

[FN 2] *Indiana Waste Systems of Indiana, Inc.*, Ind. Tax Ct. (1994)

[FN 3] The Department interpreted the decision to mean there must be both predominate use of the property and predominate engagement in public transportation.

[FN 4] *Calcar Quarries, Inc.*, Ind. Tax Ct. (1979)

[FN 5] In freight transportation, backhaul means to carry a shipment back over a segment of a route already covered.

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